

EXHIBIT 101

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL
INDUSTRY AVERAGE
WHOLESALE PRICE LITIGATION

MDL NO. 1456
NO. 01-CV-12257-PBS
JUDGE PATTI SARIS
MAG. MARIANNE BOWLER

THIS DOCUMENT RELATES
TO U.S. EX REL.
VEN-A-CARE OF THE FLORIDA
KEYS, INC. V. ABBOTT
LABORATORIES, INC., ET AL.,
NO. 06-CV-11337-PBS

VIDEOTAPED DEPOSITION OF MARY
JULIA TERREBONNE, 6080 ESPLANADE AVENUE,
BATON ROUGE, LOUISIANA 70806, TAKEN IN THE
OFFICES OF LOUISIANA DEPARTMENT OF HEALTH &
HOSPITALS, BIENVILLE BUILDING, 628 N. FOURTH
STREET, BATON ROUGE, LOUISIANA 70806, ON THE
31ST DAY OF MARCH, 2008.

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1 APPEARANCES:	1 EXAMINATION INDEX
2	2 EXAMINATION BY MR. TORBORG:10
3 UNITED STATES ATTORNEYS OFFICE, BOSTON	3 EXAMINATION BY MS. LORENZO:262
4 (BY: JEFF FAUCI, ESQUIRE)	4 EXAMINATION BY MR. FAUCI:267
5 JOHN JOSEPH MOUHLEY COURTHOUSE	5 EXAMINATION BY MR. TORBORG:275
6 1 COURTHOUSE WAY	6 EXAMINATION BY MR. FAUCI:277
7 BOSTON, MASSACHUSETTS 02110	7 * * *
8 (ATTORNEYS FOR THE UNITED STATES)	8
9	9
10 LOUISIANA DEPARTMENT OF HEALTH AND	10
11 HOSPITALS	11
12 (BY: KIMBERLY SULLIVAN, ESQUIRE)	12
13 628 N. FOURTH STREET	13
14 BIENVILLE BUILDING	14
15 BATON ROUGE, LOUISIANA 70806	15
16 (ATTORNEYS FOR THE LOUISIANA	16
17 DEPARTMENT OF HEALTH AND	17
18 HOSPITALS)	18
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1 APPEARANCES CONTINUED:	1 INDEX OF EXHIBITS
2 JONES DAY	2
3 (BY: DAVID S. TORBORG, ESQUIRE)	3 Exhibit Abbott 105081
4 51 LOUISIANA AVENUE, N.W.	4 State Plan Under Title XIX of the
5 WASHINGTON, D.C. 20001-2113	5 Social Security Act,
6 (ATTORNEYS FOR ABBOTT LABORATORIES)	6 JD-SUB-LA-001522-32.
7	7 Exhibit Abbott 1051113
8 KELLEY, DRYE & WARREN	8 Myers and Stauffer, "A Survey of
9 (BY: MARISA LORENZO, ESQUIRE)	9 Dispensing and Acquisition Costs of
10 101 PARK AVENUE	10 Pharmaceuticals in the State,
11 NEW YORK, NEW YORK 10178	11 Prepared for the Department of
12 (ATTORNEYS FOR DEY, INC.,	12 Health and Hospitals, Baton Rouge,
13 DEY, L.P. AND DEY L.P., INC.)	13 Louisiana, September 1999,"
14	14 KY_AWP_KRF_03164-72.
15 REPORTED BY:	15 Exhibit Abbott 1052134
16 CATHY RENEE POWELL, CCR	16 Memorandum from Myers and Stauffer
17	17 to M. J. Terrebonne dated March 23,
18 VIDEOGRAPHER:	18 1999, subject, preliminary
19 MICHAEL BERGERON	19 acquisition cost study findings,
20 * * *	20 JD-SUB-LA-000218 through 34.
21	21
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3	Exhibit Abbott 1053136
4	"LMMIS Design Change Request Form"
5	dated 3-25-99, JD-SUB-LA-000235
6	through 49.
7	Exhibit Abbott 1054177
8	Materials produced by Ven-A-Care of
9	the Florida Keys, VAC MDL 77742.
10	Exhibit Abbott 1055188
11	"Record of Discussion Dated March
12	20, 1997, Place, Medicaid Pharmacy
13	Administrators Symposium,"
14	HHD031-0396 through 97.
15	Exhibit Abbott 1056205
16	Document relating to State Plan
17	Amendment No. 01-08,
18	JD-SUB-LA-000684 through 86.
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3	Exhibit Abbott 1057207
4	E-mail from M.J. Terrebonne to Joe
5	Reeder, dated August 24, 2001,
6	forwarding August 8, 2001, letter
7	to Sandra Victor from Joe Reeder,
8	JD-SUB-LA-000687 through 92.
9	Exhibit Abbott 1058213
10	Survey of the Average Cost of
11	Filling a Medicaid Prescription in
12	the State of Louisiana,
13	JD-SUB-LA-001413 through 508.
14	Exhibit Abbott 1059219
15	Appendix A of LMAC manual.
16	Exhibit Abbott 1060221
17	National Association of Chain
18	Drugstores document,
19	JD-SUB-LA-001307 through 12.
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3	Exhibit Abbott 1061225
4	OIG report dated 2005, titled
5	"Comparison of Medicaid Federal
6	Upper Limit Amounts to Average
7	Manufacture Prices,"
8	JD-SUB-LA-001365 through 75.
9	Exhibit Abbott 1062241
10	Series of e-mails,
11	KY_DMS_PL-0111755 through 809.
12	Exhibit Abbott 1067253
13	HHD006-0292 through 97.
14	Exhibit Dey 057263
15	Dey, L.P. December 2001 Notice of
16	Price Change, DEY-MDL-0105071-79.
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1 THE VIDEOGRAPHER: Today is the 31st day of

2 March, 2008, the time is approximately 9:13. This

3 is the videotaped deposition of Ms. Mary J.

4 Terrebonne, taken at the Louisiana Department of

5 Health and Hospitals, located at 628 North Fourth

6 Street, Baton Rouge, Louisiana, in the case

7 entitled "In Re: Pharmaceutical Industry Average

8 Wholesale Price Litigation."

9 Would counsel please introduce themselves

10 and which parties they represent.

11 MR. TORBORG: David Torborg from Jones Day on

12 behalf of Abbott Labs.

13 MR. FAUCI: Jeff Fauci on behalf of the U.S.

14 Attorney's Office representing the United States.

15 MS. LORENZO: This is Marisa Lorenzo from

16 Kelley Drye & Warren, representing Dey, Inc., Dey,

17 L.P., and Dey, L.P., Inc.

18 MS. SULLIVAN: Kim Sullivan, attorney for the

19 Department of Health and Hospitals.

20 MARY JULIA TERREBONNE, having been first

21 duly sworn as a witness, was examined and testified

22 as follows:

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1 Q. And this is a 1999 report prepared by
 2 Myers and Stauffer?
 3 A. Yes.
 4 Q. It notes at Bates page 165 appreciation
 5 to you and others for your assistance in
 6 determining the findings in the report. Is that
 7 correct?
 8 A. Yes.
 9 Q. And if we look at page 4, under
 10 "Executive Summary," last paragraph indicates "Drug
 11 acquisition cost comparisons were compiled and
 12 analyzed for the top 600 drug products. The actual
 13 acquisition cost data shown on invoices obtained
 14 from 43 Louisiana pharmacy providers was compared
 15 to the standardized AWP."
 16 Do you see that?
 17 A. Yes.
 18 Q. So, in this report, is Myers and Stauffer
 19 using the term actual acquisition cost as one it is
 20 comparing AWP to?
 21 A. That is what it says, yes.
 22 Q. When did you first learn that this AWP's

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1 reported in the compendia did not represent actual
 2 acquisition cost?
 3 MR. FAUCI: Objection, form.
 4 THE WITNESS: I don't know when.
 5 BY MR. TORBORG
 6 Q. As far as you can remember, the AWP's in
 7 the compendia were inflated about actual
 8 acquisition cost, correct?
 9 MR. FAUCI: Object to the form.
 10 THE WITNESS: Yes.
 11 BY MR. TORBORG
 12 Q. And that was particularly true for
 13 generic drugs, right?
 14 MR. FAUCI: Objection, form.
 15 THE WITNESS: I don't know if that is correct
 16 or not. I mean, I don't know the answer to that.
 17 BY MR. TORBORG
 18 Q. Do you recall becoming aware that the
 19 AWP's in the compendia were a particularly
 20 unreliable source for actual acquisition cost?
 21 MR. FAUCI: Objection, form.
 22 THE WITNESS: I guess based upon looking at

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1 OIG reports and that type of thing, that would be
 2 my awareness.
 3 BY MR. TORBORG
 4 Q. And did you have an understanding of why
 5 it was that the AWP's reported in the compendia for
 6 generic drugs were a particularly unreliable source
 7 for actual acquisition cost?
 8 MR. FAUCI: Objection, form.
 9 THE WITNESS: I don't know.
 10 BY MR. TORBORG
 11 Q. Do you have an understanding of how it is
 12 that First DataBank sets the average wholesale
 13 price that they report?
 14 A. Do I have an understanding?
 15 Q. Yes.
 16 A. No.
 17 Q. In your position as a pharmacy consultant
 18 and later pharmacy director for the state of
 19 Louisiana, what were your expectations regarding
 20 whether or not the AWP's reported in the compendia
 21 represented actual acquisition costs for generic
 22 drugs?

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1 A. What were my expectations of --
 2 Q. Yes. Stated another way, did you expect
 3 that the AWP's reported in the compendia for generic
 4 drugs would actually represent the actual
 5 acquisition cost of pharmacies net of discounts,
 6 rebates and charge-backs?
 7 MR. FAUCI: Is there a time frame on the
 8 question?
 9 BY MR. TORBORG
 10 Q. From 1991 through 2001.
 11 A. Did I expect it? No.
 12 Q. Why not?
 13 A. Because I think both of those have two
 14 different definitions. AWP has a different
 15 definition than actual acquisition cost, and we
 16 were getting AWP's from First DataBank, not actual
 17 acquisition cost.
 18 Q. Your understanding of the definition of
 19 AWP is it is something that does not include the
 20 impact of rebates, discounts and charge-backs,
 21 correct?
 22 A. Correct. It would be the average from

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1 the wholesalers, as I understand it. They were
2 supposed to do surveys from wholesalers and
3 determine an average. But how they did that, I
4 don't know.

5 Q. But you didn't think that the prices
6 reported in the compendia were the actual average,
7 net of all rebates, charge-backs and discounts,
8 that pharmacies were actually paying from 1991
9 until 2001, did you?

10 A. That's correct, I did not.

11 Q. And were there any classes of drugs in
12 particular for which you knew AWP's were not a
13 reliable indicator of actual acquisition costs?

14 MR. FAUCI: Objection.

15 THE WITNESS: No.

16 BY MR. TORBORG

17 Q. But you became aware of, through your
18 review of reports like Myers and Stauffer's and the
19 OIG, that generic drugs, there was a larger
20 variability between AWP and actual acquisition
21 costs for generic drugs?

22 A. I don't recall that. It may be in here,

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1 I just don't remember.

2 Q. What you -- your testimony here today is
3 that your knowledge is probably best reflected --
4 what you knew when is best reflected in the reports
5 that were put in front of you?

6 MR. FAUCI: Objection.

7 THE WITNESS: Yes, we sought out to get the
8 expertise to conduct these surveys.

9 BY MR. TORBORG

10 Q. Did you have any expectations of
11 manufacturers regarding what the AWP's in the
12 compendia would represent?

13 A. No.

14 Q. Have you had any discussions with either
15 First DataBank or Red Book regarding what AWP
16 prices reported in those publications represented?

17 A. I'm sorry. In this report?

18 Q. Strike that. Let me ask an easier
19 question.

20 Have you ever spoken with anyone from
21 First DataBank?

22 A. Minimally.

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1 Q. What were your discussions about?

2 A. I don't recall, but our staff doesn't
3 speak to First DataBank directly because our fiscal
4 intermediary has a contract with First DataBank. So
5 they discussed issues with First DataBank.

6 Q. Do you recall any discussions with First
7 DataBank concerning what they were doing to come up
8 with the average wholesale price in the compendia?

9 A. No.

10 Q. Was it your practice, Ms. Terrebonne, to
11 review reports that were published by the Office of
12 Inspector General concerning Medicaid pharmacy
13 issues?

14 A. I occasionally look at them, yes.

15 Q. How would those come to your attention?

16 A. I think sometimes maybe they were sent to
17 the Medicaid director and he would forward them to
18 me. Or if there were any kind of issues coming up,
19 I may have gone to the site.

20 Q. The OIG Web site?

21 A. Yes.

22 Q. What is the last OIG report you looked

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1 at?

2 A. I don't know.

3 Q. Was it in the last year?

4 A. It is possible I looked at one in the
5 last year.

6 Q. Do you recall receiving OIG reports that
7 compared, much like the Myers and Stauffer report
8 here, AWP with some actual acquisition cost?

9 A. I'm sure I looked at it. I don't
10 remember.

11 Q. Did Louisiana have any reason to doubt
12 the -- let me strike that.

13 Did you have any reason to doubt the
14 accuracy of the findings in any OIG report?

15 A. No.

16 Q. Did the department receive reports,
17 studies or audits conducted by other states on drug
18 pricing or dispensing fees?

19 A. Yes.

20 Q. Which ones did you receive, just
21 generally speaking, what do you recall?

22 A. Probably, if Myers and Stauffer did one

<p style="text-align: right;">Page 182</p> <p>1 A. That is what it appears to be.</p> <p>2 Q. Do you recall taking any action with</p> <p>3 respect to information you received from</p> <p>4 Ven-A-Care?</p> <p>5 A. I do not.</p> <p>6 Q. Is it possible that you did, you just</p> <p>7 don't recall today?</p> <p>8 A. I would say we took action based on the</p> <p>9 Myers and Stauffer survey.</p> <p>10 Q. If you had wanted to, you could have put</p> <p>11 a maximum allowable cost on all the individual</p> <p>12 drugs that are listed in the chart on 756 and 57,</p> <p>13 correct?</p> <p>14 MR. FAUCI: Objection, form.</p> <p>15 THE WITNESS: I don't know. Some of these</p> <p>16 drugs are reimbursed through our physicians'</p> <p>17 program, so we would not -- if they are</p> <p>18 administered in the physicians' program, they are</p> <p>19 generally reimbursed in the physician's program.</p> <p>20 BY MR. TORBORG</p> <p>21 Q. Well, here, this document seems to be</p> <p>22 indicating it is an example of the Louisiana</p>	<p style="text-align: right;">Page 184</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. It notes that "Behrens compared about 300</p> <p>4 dose forms of the top 20 Medicare drugs. Included</p> <p>5 in the true cost was ten to 20 percent AWP for</p> <p>6 brand name drugs and 60 to 80 percent below AWP for</p> <p>7 generic drugs." You see that?</p> <p>8 A. Yes.</p> <p>9 Q. Behrens also recorded the industry</p> <p>10 insiders joke that "AWP really means 'ain't what's</p> <p>11 paid."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Have you heard that?</p> <p>15 A. Yes.</p> <p>16 Q. You have heard that joke regarding AWP</p> <p>17 before. Have you heard it?</p> <p>18 A. "Ain't what's paid"?</p> <p>19 Q. Yes.</p> <p>20 A. Yes.</p> <p>21 Q. When is the first time you heard that?</p> <p>22 A. I don't remember.</p>
<p style="text-align: right;">Page 183</p> <p>1 Medicaid Pharmacy Program?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know if the Louisiana Medicaid</p> <p>4 Pharmacy Program provided a reimbursement for</p> <p>5 vancomycin?</p> <p>6 A. I don't know without looking at the data.</p> <p>7 THE VIDEOGRAPHER: Off the record. It is</p> <p>8 2:22, the end of tape 2.</p> <p>9 (Recess.)</p> <p>10 THE VIDEOGRAPHER: We're back on record, it is</p> <p>11 2:36, the beginning of tape 3.</p> <p>12 BY MR. TORBORG</p> <p>13 Q. Ms. Terrebonne, if I could ask you to</p> <p>14 glance quickly at Abbott Exhibit 158, Bates page</p> <p>15 ending 449. This is the 1997 OIG report where they</p> <p>16 combined their findings from the state surveys on</p> <p>17 the difference between generic AWP and acquisition</p> <p>18 cost for generic drugs.</p> <p>19 At the last paragraph of this page, on</p> <p>20 this report that you recalled, is reference to an</p> <p>21 article dated June 10, from Behrens entitled</p> <p>22 "Hooked on Drugs."</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. It's been so long ago you can't even</p> <p>2 remember?</p> <p>3 MR. FAUCI: Object to the form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. TORBORG</p> <p>6 Q. Was it fairly early on in your career at</p> <p>7 the Louisiana Medicaid --</p> <p>8 A. I don't recall exactly.</p> <p>9 Q. As far as you can recall, you have always</p> <p>10 been aware of the joke "AWP equals ain't what's</p> <p>11 paid"?</p> <p>12 MR. FAUCI: Object to the form.</p> <p>13 THE WITNESS: Pretty much, yes. It's a</p> <p>14 running joke.</p> <p>15 BY MR. TORBORG</p> <p>16 Q. Abbott Exhibit 16 is a copy of the</p> <p>17 Behrens "Hooked on Drugs" article. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall seeing this document before</p> <p>21 today?</p> <p>22 A. I do not.</p>